



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4054

Introduced 4/27/2023, by Rep. Kelly M. Burke

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2d
35 ILCS 110/2d
35 ILCS 120/1

from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. Provides that a delivery network company that delivers tangible personal property on behalf of a marketplace seller or a marketplace serviceman is not considered a marketplace facilitator. Provides that a delivery network company is a business that facilitates, through the use of an Internet website or mobile application, the delivery of local products. Provides that a local product is any item, including food, other than freight, mail, or a package to which postage has been affixed. Effective immediately.

LRB103 31848 HLH 60483 b

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Use Tax Act is amended by changing Section
5 2d as follows:

6 (35 ILCS 105/2d)

7 Sec. 2d. Marketplace facilitators and marketplace sellers.

8 (a) As used in this Section:

9 "Affiliate" means a person that, with respect to another
10 person: (i) has a direct or indirect ownership interest of
11 more than 5 percent in the other person; or (ii) is related to
12 the other person because a third person, or a group of third
13 persons who are affiliated with each other as defined in this
14 subsection, holds a direct or indirect ownership interest of
15 more than 5% in the related person.

16 "Delivery network company" means a business that
17 facilitates, through the use of an Internet website or mobile
18 application, the delivery of local products.

19 "Local product" means any item, including food, other than
20 freight, mail, or a package to which postage has been affixed.

21 "Marketplace" means a physical or electronic place, forum,
22 platform, application, or other method by which a marketplace
23 seller sells or offers to sell items.

1 "Marketplace facilitator" means a person who, pursuant to
2 an agreement with an unrelated third-party marketplace seller,
3 directly or indirectly through one or more affiliates
4 facilitates a retail sale by an unrelated third party
5 marketplace seller by:

6 (1) listing or advertising for sale by the marketplace
7 seller in a marketplace, tangible personal property that
8 is subject to tax under this Act; and

9 (2) either directly or indirectly, through agreements
10 or arrangements with third parties, collecting payment
11 from the customer and transmitting that payment to the
12 marketplace seller regardless of whether the marketplace
13 facilitator receives compensation or other consideration
14 in exchange for its services.

15 "Marketplace facilitator" does not include a delivery
16 network company that delivers tangible personal property on
17 behalf of a marketplace seller that is engaged in business as a
18 retail vendor.

19 "Marketplace seller" means a person that sells or offers
20 to sell tangible personal property through a marketplace
21 operated by an unrelated third-party marketplace facilitator.

22 (b) Beginning on January 1, 2020, a marketplace
23 facilitator who meets either of the following thresholds is
24 considered the retailer for each sale of tangible personal
25 property made through its marketplace:

26 (1) the cumulative gross receipts from sales of

1 tangible personal property to purchasers in Illinois by
2 the marketplace facilitator and by marketplace sellers
3 selling through the marketplace are \$100,000 or more; or

4 (2) the marketplace facilitator and marketplace
5 sellers selling through the marketplace cumulatively enter
6 into 200 or more separate transactions for the sale of
7 tangible personal property to purchasers in Illinois.

8 A marketplace facilitator shall determine on a quarterly
9 basis, ending on the last day of March, June, September, and
10 December, whether he or she meets the threshold of either
11 paragraph (1) or (2) of this subsection (b) for the preceding
12 12-month period. If the marketplace facilitator meets the
13 threshold of either paragraph (1) or (2) for a 12-month
14 period, he or she is considered a retailer maintaining a place
15 of business in this State and is required to collect and remit
16 the tax imposed under this Act and file returns for one year.
17 At the end of that one-year period, the marketplace
18 facilitator shall determine whether the marketplace
19 facilitator met the threshold of either paragraph (1) or (2)
20 during the preceding 12-month period. If the marketplace
21 facilitator met the threshold in either paragraph (1) or (2)
22 for the preceding 12-month period, he or she is considered a
23 retailer maintaining a place of business in this State and is
24 required to collect and remit the tax imposed under this Act
25 and file returns for the subsequent year. If at the end of a
26 one-year period a marketplace facilitator that was required to

1 collect and remit the tax imposed under this Act determines
2 that he or she did not meet the threshold in either paragraph
3 (1) or (2) during the preceding 12-month period, the
4 marketplace facilitator shall subsequently determine on a
5 quarterly basis, ending on the last day of March, June,
6 September, and December, whether he or she meets the threshold
7 of either paragraph (1) or (2) for the preceding 12-month
8 period.

9 (c) Beginning on January 1, 2020 a marketplace facilitator
10 considered to be the retailer pursuant to subsection (b) of
11 this Section is considered the retailer with respect to each
12 sale made through its marketplace and is liable for collecting
13 and remitting the tax under this Act on all such sales. The
14 marketplace facilitator who is considered to be the retailer
15 under subsection (b) for sales made through its marketplace
16 has all the rights and duties, and is required to comply with
17 the same requirements and procedures, as all other retailers
18 maintaining a place of business in this State who are
19 registered or who are required to be registered to collect and
20 remit the tax imposed by this Act with respect to such sales.

21 (d) A marketplace facilitator shall:

22 (1) certify to each marketplace seller that the
23 marketplace facilitator assumes the rights and duties of a
24 retailer under this Act with respect to sales made by the
25 marketplace seller through the marketplace; and

26 (2) collect taxes imposed by this Act as required by

1 Section 3-45 of this Act for sales made through the
2 marketplace.

3 (e) A marketplace seller shall retain books and records
4 for all sales made through a marketplace in accordance with
5 the requirements of Section 11.

6 (f) A marketplace seller shall furnish to the marketplace
7 facilitator information that is necessary for the marketplace
8 facilitator to correctly collect and remit taxes for a retail
9 sale. The information may include a certification that an item
10 being sold is taxable, not taxable, exempt from taxation, or
11 taxable at a specified rate. A marketplace seller shall be
12 held harmless for liability for the tax imposed under this Act
13 when a marketplace facilitator fails to correctly collect and
14 remit tax after having been provided with information by a
15 marketplace seller to correctly collect and remit taxes
16 imposed under this Act.

17 (g) If the marketplace facilitator demonstrates to the
18 satisfaction of the Department that its failure to correctly
19 collect and remit tax on a retail sale resulted from the
20 marketplace facilitator's good faith reliance on incorrect or
21 insufficient information provided by a marketplace seller, it
22 shall be relieved of liability for the tax on that retail sale.
23 In this case, a marketplace seller is liable for any resulting
24 tax due.

25 (h) (Blank).

26 (i) This Section does not affect the tax liability of a

1 purchaser under this Act.

2 (j) (Blank).

3 (k) A marketplace facilitator required to collect taxes
4 imposed under this Section and this Act on retail sales made
5 through its marketplace shall be liable to the Department for
6 such taxes, except when the marketplace facilitator is
7 relieved of the duty to remit such taxes by virtue of having
8 paid to the Department taxes imposed by the Retailers'
9 Occupation Tax Act upon his or her gross receipts from the same
10 transactions.

11 (l) If, for any reason, the Department is prohibited from
12 enforcing the marketplace facilitator's duty under this Act to
13 collect and remit taxes pursuant to this Section, the duty to
14 collect and remit such taxes reverts to the marketplace seller
15 that is a retailer maintaining a place of business in this
16 State pursuant to Section 2.

17 (Source: P.A. 101-9, eff. 6-5-19; 101-604, eff. 1-1-20.)

18 Section 10. The Service Use Tax Act is amended by changing
19 Section 2d as follows:

20 (35 ILCS 110/2d)

21 Sec. 2d. Marketplace facilitators and marketplace
22 servicemen.

23 (a) Definitions. For purposes of this Section:

24 "Affiliate" means a person that, with respect to another

1 person: (i) has a direct or indirect ownership interest of
2 more than 5% in the other person; or (ii) is related to the
3 other person because a third person, or group of third persons
4 who are affiliated with each other as defined in this
5 subsection, holds a direct or indirect ownership interest of
6 more than 5% in the related person.

7 "Delivery network company" means a business that
8 facilitates, through the use of an Internet website or mobile
9 application, the delivery of local products.

10 "Local product" means any item, including food, other than
11 freight, mail, or a package to which postage has been affixed.

12 "Marketplace" means a physical or electronic place, forum,
13 platform, application or other method by which a marketplace
14 serviceman makes or offers to make sales of service.

15 "Marketplace facilitator" means a person who, pursuant to
16 an agreement with a marketplace serviceman, facilitates sales
17 of service by that marketplace serviceman. A person
18 facilitates a sale of service by, directly or indirectly
19 through one or more affiliates, doing both of the following:
20 (i) listing or otherwise making available a sale of service of
21 the marketplace serviceman through a marketplace owned or
22 operated by the marketplace facilitator; and (ii) processing
23 sales of service for, or payments for sales of service by,
24 marketplace servicemen.

25 "Marketplace facilitator" does not include a delivery
26 network company that delivers tangible personal property on

1 behalf of a marketplace serviceman that is engaged in business
2 as a retail vendor.

3 "Marketplace serviceman" means a person that makes or
4 offers to make a sale of service through a marketplace.

5 (b) Beginning January 1, 2020, a marketplace facilitator
6 who meets either of the following criteria is considered the
7 serviceman for each sale of service made on the marketplace:

8 (1) the cumulative gross receipts from sales of
9 service to purchasers in Illinois by the marketplace
10 facilitator and by marketplace servicemen are \$100,000 or
11 more; or

12 (2) the marketplace facilitator and marketplace
13 servicemen cumulatively enter into 200 or more separate
14 transactions for the sale of service to purchasers in
15 Illinois.

16 A marketplace facilitator shall determine on a quarterly
17 basis, ending on the last day of March, June, September, and
18 December, whether he or she meets the criteria of either
19 paragraph (1) or (2) of this subsection (b) for the preceding
20 12-month period. If the marketplace facilitator meets the
21 criteria of either paragraph (1) or (2) for a 12-month period,
22 he or she is considered a serviceman maintaining a place of
23 business in this State and is required to collect and remit the
24 tax imposed under this Act and file returns for one year. At
25 the end of that one-year period, the marketplace facilitator
26 shall determine whether the marketplace facilitator met the

1 criteria of either paragraph (1) or (2) during the preceding
2 12-month period. If the marketplace facilitator met the
3 criteria in either paragraph (1) or (2) for the preceding
4 12-month period, he or she is considered a serviceman
5 maintaining a place of business in this State and is required
6 to collect and remit the tax imposed under this Act and file
7 returns for the subsequent year. If, at the end of a one-year
8 period, a marketplace facilitator that was required to collect
9 and remit the tax imposed under this Act determines that he or
10 she did not meet the criteria in either paragraph (1) or (2)
11 during the preceding 12-month period, the marketplace
12 facilitator shall subsequently determine on a quarterly basis,
13 ending on the last day of March, June, September, and
14 December, whether he or she meets the criteria of either
15 paragraph (1) or (2) for the preceding 12-month period.

16 (c) A marketplace facilitator that meets either of the
17 thresholds in subsection (b) of this Section is considered the
18 serviceman for each sale of service made through its
19 marketplace and is liable for collecting and remitting the tax
20 under this Act on all such sales. The marketplace facilitator
21 has all the rights and duties, and is required to comply with
22 the same requirements and procedures, as all other servicemen
23 maintaining a place of business in this State who are
24 registered or who are required to be registered to collect and
25 remit the tax imposed by this Act.

26 (d) A marketplace facilitator shall:

1 (1) certify to each marketplace serviceman that the
2 marketplace facilitator assumes the rights and duties of a
3 serviceman under this Act with respect to sales of service
4 made by the marketplace serviceman through the
5 marketplace; and

6 (2) collect taxes imposed by this Act as required by
7 Section 3-40 of this Act for sales of service made through
8 the marketplace.

9 (e) A marketplace serviceman shall retain books and
10 records for all sales of service made through a marketplace in
11 accordance with the requirements of Section 11.

12 (f) A marketplace serviceman shall furnish to the
13 marketplace facilitator information that is necessary for the
14 marketplace facilitator to correctly collect and remit taxes
15 for a sale of service. The information may include a
16 certification that an item transferred incident to a sale of
17 service under this Act is taxable, not taxable, exempt from
18 taxation, or taxable at a specified rate. A marketplace
19 serviceman shall be held harmless for liability for the tax
20 imposed under this Act when a marketplace facilitator fails to
21 correctly collect and remit tax after having been provided
22 with information by a marketplace serviceman to correctly
23 collect and remit taxes imposed under this Act.

24 (g) Except as provided in subsection (h), if the
25 marketplace facilitator demonstrates to the satisfaction of
26 the Department that its failure to correctly collect and remit

1 tax on a sale of service resulted from the marketplace
2 facilitator's good faith reliance on incorrect or insufficient
3 information provided by a marketplace serviceman, it shall be
4 relieved of liability for the tax on that sale of service. In
5 this case, a marketplace serviceman is liable for any
6 resulting tax due.

7 (h) A marketplace facilitator and marketplace serviceman
8 that are affiliates, as defined by subsection (a), are jointly
9 and severally liable for tax liability resulting from a sale
10 of service made by the affiliated marketplace serviceman
11 through the marketplace.

12 (i) This Section does not affect the tax liability of a
13 purchaser under this Act.

14 (j) The Department may adopt rules for the administration
15 and enforcement of the provisions of this Section.

16 (Source: P.A. 101-9, eff. 6-5-19.)

17 Section 15. The Retailers' Occupation Tax Act is amended
18 by changing Section 1 as follows:

19 (35 ILCS 120/1) (from Ch. 120, par. 440)

20 Sec. 1. Definitions. "Sale at retail" means any transfer
21 of the ownership of or title to tangible personal property to a
22 purchaser, for the purpose of use or consumption, and not for
23 the purpose of resale in any form as tangible personal
24 property to the extent not first subjected to a use for which

1 it was purchased, for a valuable consideration: Provided that
2 the property purchased is deemed to be purchased for the
3 purpose of resale, despite first being used, to the extent to
4 which it is resold as an ingredient of an intentionally
5 produced product or byproduct of manufacturing. For this
6 purpose, slag produced as an incident to manufacturing pig
7 iron or steel and sold is considered to be an intentionally
8 produced byproduct of manufacturing. Transactions whereby the
9 possession of the property is transferred but the seller
10 retains the title as security for payment of the selling price
11 shall be deemed to be sales.

12 "Sale at retail" shall be construed to include any
13 transfer of the ownership of or title to tangible personal
14 property to a purchaser, for use or consumption by any other
15 person to whom such purchaser may transfer the tangible
16 personal property without a valuable consideration, and to
17 include any transfer, whether made for or without a valuable
18 consideration, for resale in any form as tangible personal
19 property unless made in compliance with Section 2c of this
20 Act.

21 Sales of tangible personal property, which property, to
22 the extent not first subjected to a use for which it was
23 purchased, as an ingredient or constituent, goes into and
24 forms a part of tangible personal property subsequently the
25 subject of a "Sale at retail", are not sales at retail as
26 defined in this Act: Provided that the property purchased is

1 deemed to be purchased for the purpose of resale, despite
2 first being used, to the extent to which it is resold as an
3 ingredient of an intentionally produced product or byproduct
4 of manufacturing.

5 "Sale at retail" shall be construed to include any
6 Illinois florist's sales transaction in which the purchase
7 order is received in Illinois by a florist and the sale is for
8 use or consumption, but the Illinois florist has a florist in
9 another state deliver the property to the purchaser or the
10 purchaser's donee in such other state.

11 Nonreusable tangible personal property that is used by
12 persons engaged in the business of operating a restaurant,
13 cafeteria, or drive-in is a sale for resale when it is
14 transferred to customers in the ordinary course of business as
15 part of the sale of food or beverages and is used to deliver,
16 package, or consume food or beverages, regardless of where
17 consumption of the food or beverages occurs. Examples of those
18 items include, but are not limited to nonreusable, paper and
19 plastic cups, plates, baskets, boxes, sleeves, buckets or
20 other containers, utensils, straws, placemats, napkins, doggie
21 bags, and wrapping or packaging materials that are transferred
22 to customers as part of the sale of food or beverages in the
23 ordinary course of business.

24 The purchase, employment and transfer of such tangible
25 personal property as newsprint and ink for the primary purpose
26 of conveying news (with or without other information) is not a

1 purchase, use or sale of tangible personal property.

2 A person whose activities are organized and conducted
3 primarily as a not-for-profit service enterprise, and who
4 engages in selling tangible personal property at retail
5 (whether to the public or merely to members and their guests)
6 is engaged in the business of selling tangible personal
7 property at retail with respect to such transactions,
8 excepting only a person organized and operated exclusively for
9 charitable, religious or educational purposes either (1), to
10 the extent of sales by such person to its members, students,
11 patients or inmates of tangible personal property to be used
12 primarily for the purposes of such person, or (2), to the
13 extent of sales by such person of tangible personal property
14 which is not sold or offered for sale by persons organized for
15 profit. The selling of school books and school supplies by
16 schools at retail to students is not "primarily for the
17 purposes of" the school which does such selling. The
18 provisions of this paragraph shall not apply to nor subject to
19 taxation occasional dinners, socials or similar activities of
20 a person organized and operated exclusively for charitable,
21 religious or educational purposes, whether or not such
22 activities are open to the public.

23 A person who is the recipient of a grant or contract under
24 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
25 serves meals to participants in the federal Nutrition Program
26 for the Elderly in return for contributions established in

1 amount by the individual participant pursuant to a schedule of
2 suggested fees as provided for in the federal Act is not
3 engaged in the business of selling tangible personal property
4 at retail with respect to such transactions.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of or title to tangible personal
7 property for a valuable consideration.

8 "Reseller of motor fuel" means any person engaged in the
9 business of selling or delivering or transferring title of
10 motor fuel to another person other than for use or
11 consumption. No person shall act as a reseller of motor fuel
12 within this State without first being registered as a reseller
13 pursuant to Section 2c or a retailer pursuant to Section 2a.

14 "Selling price" or the "amount of sale" means the
15 consideration for a sale valued in money whether received in
16 money or otherwise, including cash, credits, property, other
17 than as hereinafter provided, and services, but, prior to
18 January 1, 2020 and beginning again on January 1, 2022, not
19 including the value of or credit given for traded-in tangible
20 personal property where the item that is traded-in is of like
21 kind and character as that which is being sold; beginning
22 January 1, 2020 and until January 1, 2022, "selling price"
23 includes the portion of the value of or credit given for
24 traded-in motor vehicles of the First Division as defined in
25 Section 1-146 of the Illinois Vehicle Code of like kind and
26 character as that which is being sold that exceeds \$10,000.

1 "Selling price" shall be determined without any deduction on
2 account of the cost of the property sold, the cost of materials
3 used, labor or service cost or any other expense whatsoever,
4 but does not include charges that are added to prices by
5 sellers on account of the seller's tax liability under this
6 Act, or on account of the seller's duty to collect, from the
7 purchaser, the tax that is imposed by the Use Tax Act, or,
8 except as otherwise provided with respect to any cigarette tax
9 imposed by a home rule unit, on account of the seller's tax
10 liability under any local occupation tax administered by the
11 Department, or, except as otherwise provided with respect to
12 any cigarette tax imposed by a home rule unit on account of the
13 seller's duty to collect, from the purchasers, the tax that is
14 imposed under any local use tax administered by the
15 Department. Effective December 1, 1985, "selling price" shall
16 include charges that are added to prices by sellers on account
17 of the seller's tax liability under the Cigarette Tax Act, on
18 account of the sellers' duty to collect, from the purchaser,
19 the tax imposed under the Cigarette Use Tax Act, and on account
20 of the seller's duty to collect, from the purchaser, any
21 cigarette tax imposed by a home rule unit.

22 Notwithstanding any law to the contrary, for any motor
23 vehicle, as defined in Section 1-146 of the Vehicle Code, that
24 is sold on or after January 1, 2015 for the purpose of leasing
25 the vehicle for a defined period that is longer than one year
26 and (1) is a motor vehicle of the second division that: (A) is

1 a self-contained motor vehicle designed or permanently
2 converted to provide living quarters for recreational,
3 camping, or travel use, with direct walk through access to the
4 living quarters from the driver's seat; (B) is of the van
5 configuration designed for the transportation of not less than
6 7 nor more than 16 passengers; or (C) has a gross vehicle
7 weight rating of 8,000 pounds or less or (2) is a motor vehicle
8 of the first division, "selling price" or "amount of sale"
9 means the consideration received by the lessor pursuant to the
10 lease contract, including amounts due at lease signing and all
11 monthly or other regular payments charged over the term of the
12 lease. Also included in the selling price is any amount
13 received by the lessor from the lessee for the leased vehicle
14 that is not calculated at the time the lease is executed,
15 including, but not limited to, excess mileage charges and
16 charges for excess wear and tear. For sales that occur in
17 Illinois, with respect to any amount received by the lessor
18 from the lessee for the leased vehicle that is not calculated
19 at the time the lease is executed, the lessor who purchased the
20 motor vehicle does not incur the tax imposed by the Use Tax Act
21 on those amounts, and the retailer who makes the retail sale of
22 the motor vehicle to the lessor is not required to collect the
23 tax imposed by the Use Tax Act or to pay the tax imposed by
24 this Act on those amounts. However, the lessor who purchased
25 the motor vehicle assumes the liability for reporting and
26 paying the tax on those amounts directly to the Department in

1 the same form (Illinois Retailers' Occupation Tax, and local
2 retailers' occupation taxes, if applicable) in which the
3 retailer would have reported and paid such tax if the retailer
4 had accounted for the tax to the Department. For amounts
5 received by the lessor from the lessee that are not calculated
6 at the time the lease is executed, the lessor must file the
7 return and pay the tax to the Department by the due date
8 otherwise required by this Act for returns other than
9 transaction returns. If the retailer is entitled under this
10 Act to a discount for collecting and remitting the tax imposed
11 under this Act to the Department with respect to the sale of
12 the motor vehicle to the lessor, then the right to the discount
13 provided in this Act shall be transferred to the lessor with
14 respect to the tax paid by the lessor for any amount received
15 by the lessor from the lessee for the leased vehicle that is
16 not calculated at the time the lease is executed; provided
17 that the discount is only allowed if the return is timely filed
18 and for amounts timely paid. The "selling price" of a motor
19 vehicle that is sold on or after January 1, 2015 for the
20 purpose of leasing for a defined period of longer than one year
21 shall not be reduced by the value of or credit given for
22 traded-in tangible personal property owned by the lessor, nor
23 shall it be reduced by the value of or credit given for
24 traded-in tangible personal property owned by the lessee,
25 regardless of whether the trade-in value thereof is assigned
26 by the lessee to the lessor. In the case of a motor vehicle

1 that is sold for the purpose of leasing for a defined period of
2 longer than one year, the sale occurs at the time of the
3 delivery of the vehicle, regardless of the due date of any
4 lease payments. A lessor who incurs a Retailers' Occupation
5 Tax liability on the sale of a motor vehicle coming off lease
6 may not take a credit against that liability for the Use Tax
7 the lessor paid upon the purchase of the motor vehicle (or for
8 any tax the lessor paid with respect to any amount received by
9 the lessor from the lessee for the leased vehicle that was not
10 calculated at the time the lease was executed) if the selling
11 price of the motor vehicle at the time of purchase was
12 calculated using the definition of "selling price" as defined
13 in this paragraph. Notwithstanding any other provision of this
14 Act to the contrary, lessors shall file all returns and make
15 all payments required under this paragraph to the Department
16 by electronic means in the manner and form as required by the
17 Department. This paragraph does not apply to leases of motor
18 vehicles for which, at the time the lease is entered into, the
19 term of the lease is not a defined period, including leases
20 with a defined initial period with the option to continue the
21 lease on a month-to-month or other basis beyond the initial
22 defined period.

23 The phrase "like kind and character" shall be liberally
24 construed (including but not limited to any form of motor
25 vehicle for any form of motor vehicle, or any kind of farm or
26 agricultural implement for any other kind of farm or

1 agricultural implement), while not including a kind of item
2 which, if sold at retail by that retailer, would be exempt from
3 retailers' occupation tax and use tax as an isolated or
4 occasional sale.

5 "Gross receipts" from the sales of tangible personal
6 property at retail means the total selling price or the amount
7 of such sales, as hereinbefore defined. In the case of charge
8 and time sales, the amount thereof shall be included only as
9 and when payments are received by the seller. Receipts or
10 other consideration derived by a seller from the sale,
11 transfer or assignment of accounts receivable to a wholly
12 owned subsidiary will not be deemed payments prior to the time
13 the purchaser makes payment on such accounts.

14 "Department" means the Department of Revenue.

15 "Person" means any natural individual, firm, partnership,
16 association, joint stock company, joint adventure, public or
17 private corporation, limited liability company, or a receiver,
18 executor, trustee, guardian or other representative appointed
19 by order of any court.

20 The isolated or occasional sale of tangible personal
21 property at retail by a person who does not hold himself out as
22 being engaged (or who does not habitually engage) in selling
23 such tangible personal property at retail, or a sale through a
24 bulk vending machine, does not constitute engaging in a
25 business of selling such tangible personal property at retail
26 within the meaning of this Act; provided that any person who is

1 engaged in a business which is not subject to the tax imposed
2 by this Act because of involving the sale of or a contract to
3 sell real estate or a construction contract to improve real
4 estate or a construction contract to engineer, install, and
5 maintain an integrated system of products, but who, in the
6 course of conducting such business, transfers tangible
7 personal property to users or consumers in the finished form
8 in which it was purchased, and which does not become real
9 estate or was not engineered and installed, under any
10 provision of a construction contract or real estate sale or
11 real estate sales agreement entered into with some other
12 person arising out of or because of such nontaxable business,
13 is engaged in the business of selling tangible personal
14 property at retail to the extent of the value of the tangible
15 personal property so transferred. If, in such a transaction, a
16 separate charge is made for the tangible personal property so
17 transferred, the value of such property, for the purpose of
18 this Act, shall be the amount so separately charged, but not
19 less than the cost of such property to the transferor; if no
20 separate charge is made, the value of such property, for the
21 purposes of this Act, is the cost to the transferor of such
22 tangible personal property. Construction contracts for the
23 improvement of real estate consisting of engineering,
24 installation, and maintenance of voice, data, video, security,
25 and all telecommunication systems do not constitute engaging
26 in a business of selling tangible personal property at retail

1 within the meaning of this Act if they are sold at one
2 specified contract price.

3 A person who holds himself or herself out as being engaged
4 (or who habitually engages) in selling tangible personal
5 property at retail is a person engaged in the business of
6 selling tangible personal property at retail hereunder with
7 respect to such sales (and not primarily in a service
8 occupation) notwithstanding the fact that such person designs
9 and produces such tangible personal property on special order
10 for the purchaser and in such a way as to render the property
11 of value only to such purchaser, if such tangible personal
12 property so produced on special order serves substantially the
13 same function as stock or standard items of tangible personal
14 property that are sold at retail.

15 Persons who engage in the business of transferring
16 tangible personal property upon the redemption of trading
17 stamps are engaged in the business of selling such property at
18 retail and shall be liable for and shall pay the tax imposed by
19 this Act on the basis of the retail value of the property
20 transferred upon redemption of such stamps.

21 "Bulk vending machine" means a vending machine, containing
22 unsorted confections, nuts, toys, or other items designed
23 primarily to be used or played with by children which, when a
24 coin or coins of a denomination not larger than \$0.50 are
25 inserted, are dispensed in equal portions, at random and
26 without selection by the customer.

1 "Remote retailer" means a retailer that does not maintain
2 within this State, directly or by a subsidiary, an office,
3 distribution house, sales house, warehouse or other place of
4 business, or any agent or other representative operating
5 within this State under the authority of the retailer or its
6 subsidiary, irrespective of whether such place of business or
7 agent is located here permanently or temporarily or whether
8 such retailer or subsidiary is licensed to do business in this
9 State.

10 "Marketplace" means a physical or electronic place, forum,
11 platform, application, or other method by which a marketplace
12 seller sells or offers to sell items.

13 "Marketplace facilitator" means a person who, pursuant to
14 an agreement with an unrelated third-party marketplace seller,
15 directly or indirectly through one or more affiliates
16 facilitates a retail sale by an unrelated third party
17 marketplace seller by:

18 (1) listing or advertising for sale by the marketplace
19 seller in a marketplace, tangible personal property that
20 is subject to tax under this Act; and

21 (2) either directly or indirectly, through agreements
22 or arrangements with third parties, collecting payment
23 from the customer and transmitting that payment to the
24 marketplace seller regardless of whether the marketplace
25 facilitator receives compensation or other consideration
26 in exchange for its services.

1 A person who provides advertising services, including
2 listing products for sale, is not considered a marketplace
3 facilitator, so long as the advertising service platform or
4 forum does not engage, directly or indirectly through one or
5 more affiliated persons, in the activities described in
6 paragraph (2) of this definition of "marketplace facilitator".

7 "Marketplace facilitator" does not include any person
8 licensed under the Auction License Act. This exemption does
9 not apply to any person who is an Internet auction listing
10 service, as defined by the Auction License Act.

11 "Marketplace facilitator" does not include a delivery
12 network company that delivers tangible personal property on
13 behalf of a marketplace seller that is engaged in business as a
14 retail vendor.

15 "Delivery network company" means a business that
16 facilitates, through the use of an Internet website or mobile
17 application, the delivery of local products.

18 "Local product" means any item, including food, other than
19 freight, mail, or a package to which postage has been affixed.

20 "Marketplace seller" means a person that makes sales
21 through a marketplace operated by an unrelated third party
22 marketplace facilitator.

23 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20;
24 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; 102-813, eff.
25 5-13-22.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.